

AMENDED IN SENATE MAY 10, 2010

SENATE BILL

No. 1404

Introduced by Senator Pavley

February 19, 2010

An act to amend Sections 13002, 13004, 13005, 13006, 18400, 19202, 19214, and 19214.5 of, to add Section 19212.5 to, and to repeal Section 13007 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1404, as amended, Pavley. Elections: ballot cards and voting systems.

Existing law requires the Secretary of State to adopt regulations governing the manufacture, distribution, and inventory control of punchcards, and requiring the inspection of facilities that manufacture and store punchcards. Existing law requires the Secretary of State to approve a punchcard manufacturer prior to the manufacturer's providing of punchcards for use in California elections.

This bill would instead require the Secretary of State to adopt regulations governing the manufacture, finishing, quality standards, and inventory control of ballot cards, and requiring the biennial inspection of facilities that manufacture, finish, and store ballot cards. The bill would require that, no later than 5 days prior to inspection, the ballot card manufacturer or finisher disclose to the Secretary of State known flaws or defects in its ~~current or past~~ manufacturing or finishing process of ballot cards or manufactured or finished ballot cards that could adversely affect the *future* casting or tallying of votes. The bill would require a manufacturer or finisher of ballot cards to notify the Secretary of State and affected local elections officials of defects that would adversely affect the *future* casting or tallying of ballot cards that

it discovers after approval by the Secretary of State within 2 business days of their discovery.

Existing law provides for a revolving fund that is continuously appropriated for the purpose of purchasing ballot paper and punchcards.

This bill would repeal these provisions.

Existing law provides that a person or corporation owning or being interested in a voting system or part of a voting system may apply to the Secretary of State to examine it and report on its accuracy and efficiency to fulfill its purpose. Existing law requires the Secretary of State to issue a report regarding whether, in his or her opinion, the voting system or part of a voting system can be safely used.

This bill would instead require that a vendor of a voting system or part of a voting system include in its application to the Secretary of State notification of a known defect, fault, or failure of the hardware, software, or firmware of the voting system or a part of the voting system. The bill would also require the vendor to notify the Secretary of State of such a defect, fault, or failure discovered either after the vendor submitted his or her application but prior to the issuance of the Secretary of State's report or after the voting system or the part of a voting system is approved by the Secretary of State. The bill would also require the Secretary of State to notify and issue a report to the United States Election Assistance Commission regarding the defects, faults, or failures made known by the vendor at the initiation of, during, or after the approval process.

Existing law permits the Secretary of State to seek damages for an unauthorized change in hardware, software, or firmware in a certified or conditionally certified voting system.

This bill would also permit the Secretary of State to seek specified civil penalties for a known but undisclosed defect, fault, or failure in an approved or conditionally approved voting system and for a failure to comply with notification requirements concerning the defect, fault, or failure and to seek a refund of payment made for the voting system or part of the system.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13002 of the Elections Code is amended
2 to read:

1 13002. Ballot paper and ballot cards used by a jurisdiction
2 holding an election pursuant to the laws of California shall be
3 tinted and watermarked or overprinted with a design, to be
4 furnished by the Secretary of State, so that the watermark or
5 overprint is plainly discernible.

6 SEC. 2. Section 13004 of the Elections Code is amended to
7 read:

8 13004. (a) The Secretary of State shall adopt regulations
9 governing the manufacture, finishing, quality standards,
10 distribution, and inventory control of ballot cards and requiring
11 the biennial inspection of the manufacturing, finishing, and storage
12 facilities involving ballot cards. The Secretary of State shall also
13 approve each ballot card manufacturer or finisher prior to a
14 manufacturer or finisher providing ballot cards for use in California
15 elections.

16 (b) Not later than five working days before the Secretary of
17 State begins his or her initial inspection, the ballot card
18 manufacturer or finisher shall disclose to the Secretary of State in
19 writing any known flaw or defect in its ~~current or past~~ ballot card
20 manufacturing or finishing process or manufactured or finished
21 ballot cards that could adversely affect the *future* casting or tallying
22 of votes. Once approved by the Secretary of State, the ballot card
23 manufacturer or finisher shall notify the Secretary of State and the
24 affected local elections officials in writing within two business
25 days after it discovers any flaw or defect in its ballot card
26 manufacturing or finishing process or manufactured or finished
27 ballot cards that could adversely affect the *future* casting or tallying
28 of votes.

29 SEC. 3. Section 13005 of the Elections Code is amended to
30 read:

31 13005. (a) Before a user may purchase ballot cards, the user
32 shall request in writing a release for a specific quantity of these
33 ballot cards from the Secretary of State. If the request is in order,
34 the Secretary of State shall issue a written release for that quantity
35 to the manufacturer, or to the authorized warehouse, and to the
36 user. The format, text, and use of the request and release shall be
37 governed by regulations adopted by the Secretary of State.

38 (b) Nothing in this section prohibits a verbal request or verbal
39 release, provided that this verbal request or verbal release is

1 immediately confirmed in writing. The regulations shall expressly
2 deny the manufacturing of ballot cards without a specific release.

3 SEC. 4. Section 13006 of the Elections Code is amended to
4 read:

5 13006. A user, vendor, or manufacturer shall not warehouse
6 for a subsequent election ballot paper or ballot cards furnished or
7 released by the Secretary of State for a specific election without
8 first obtaining authorization in writing from the Secretary of State
9 for the storage. The authorization shall include the particular details
10 of the amount to be stored so that audit controls may be established
11 and maintained. Ballot paper or ballot cards not used in that
12 election, not authorized to be retained for subsequent elections,
13 and not returned to the Secretary of State, shall be destroyed. A
14 certificate of destruction setting forth the date of destruction and
15 the amount of the ballot paper or ballot cards destroyed shall be
16 transmitted to the Secretary of State.

17 SEC. 5. Section 13007 of the Elections Code is repealed.

18 SEC. 6. Section 18400 of the Elections Code is amended to
19 read:

20 18400. A person who makes, uses, keeps, or furnishes to others,
21 paper or cards watermarked or overprinted in imitation of ballot
22 paper or ballot cards is punishable by a fine not exceeding one
23 thousand dollars (\$1,000), or by imprisonment in the state prison
24 for 16 months, two or three years, or by both the fine and
25 imprisonment.

26 SEC. 7. Section 19202 of the Elections Code is amended to
27 read:

28 19202. (a) A person or corporation owning or being interested
29 in a voting system or a part of a voting system may apply to the
30 Secretary of State to examine it and report on its accuracy and
31 efficiency to fulfill its purpose. As part of its application, the
32 vendor of a voting system or the part of a voting system shall notify
33 the Secretary of State in writing of any known defect, fault, or
34 failure of the version of the hardware, software, or firmware of
35 the voting system or a part of the voting system submitted. The
36 Secretary of State shall not begin his or her examination until he
37 or she receives a completed application from the vendor of the
38 voting system or ~~the~~ a part of the voting system. The vendor shall
39 also notify the Secretary of State in writing of any defect, fault, or
40 failure of the version of the hardware, software, or firmware of

1 the voting system or a part of the voting system submitted that is
2 discovered after the application is submitted and before the
3 Secretary of State submits the report required by Section 19207.
4 The Secretary of State shall complete his or her examination
5 without undue delay.

6 (b) After receiving a vendor's written notification of a defect,
7 fault, or failure, the Secretary of State shall notify the United States
8 Election Assistance Commission or its successor entity of the
9 problem as soon as practicable so as to present a reasonably
10 complete description of the problem. The Secretary of State shall
11 subsequently submit a report regarding the problem to the United
12 States Election Assistance Commission or its successor entity. The
13 report shall include any report regarding the problem submitted
14 to the Secretary of State by the vendor.

15 (c) The following definitions apply for purposes of this article:

16 (1) "Defect" means any flaw in the hardware or documentation
17 of an approved or conditionally approved voting system that could
18 result in a state of unfitness for use or nonconformance to the
19 manufacturer's specifications.

20 (2) "Failure" means a discrepancy between the external results
21 of the operation of any software or firmware in an approved or
22 conditionally approved voting system and the manufacturer's
23 product requirements for that software or firmware.

24 (3) "Fault" means a step, process, or data definition in any
25 software or firmware in an approved or conditionally approved
26 voting system that is incorrect under the manufacturer's program
27 specification.

28 SEC. 8. Section 19212.5 is added to the Elections Code, to
29 read:

30 19212.5. (a) When a voting system or a part of a voting system
31 has been approved by the Secretary of State, the vendor shall notify
32 the Secretary of State and all local elections officials who use the
33 system in writing of any defect, fault, or failure of the hardware,
34 software, or firmware of the voting system or a part of the voting
35 system within 30 calendar days after the vendor learns of the defect,
36 fault, or failure.

37 (b) Not later than January 8, 2011, the vendor of a voting system
38 or a part of a voting system that has been approved by the Secretary
39 of State prior to the effective date of this section shall notify the
40 Secretary of State and all local elections officials who use the

1 system in writing of any defect, fault, or failure of the hardware,
2 software, or firmware of the voting system or a part of the voting
3 system the vendor was aware of prior to January 1, 2011.

4 (c) After receiving a vendor's written notification of a defect,
5 fault, or failure pursuant to subdivision (a) or (b), the Secretary of
6 State shall notify the United States Election Assistance Commission
7 or its successor entity of the problem as soon as practicable so as
8 to present a reasonably complete description of the problem. The
9 Secretary of State shall subsequently submit a report regarding the
10 problem to the United States Election Assistance Commission or
11 its successor entity. The report shall include any report regarding
12 the problem submitted to the Secretary of State by the vendor.

13 SEC. 9. Section 19214 of the Elections Code is amended to
14 read:

15 19214. The Secretary of State may seek injunctive and
16 administrative relief when a voting system or a part of a voting
17 system has been compromised by the addition or deletion of
18 hardware, software, or firmware without prior approval or is
19 defective due to a known hardware, software, or firmware defect,
20 fault, or failure that has not been disclosed pursuant to Section
21 19202 or 19212.5.

22 SEC. 10. Section 19214.5 of the Elections Code is amended
23 to read:

24 19214.5. (a) The Secretary of State may seek all of the
25 following relief for an unauthorized change in hardware, software,
26 or firmware in a voting system approved or conditionally approved
27 in California:

28 (1) A civil penalty from the offending party or parties, not to
29 exceed ten thousand dollars (\$10,000) per violation. For purposes
30 of this subdivision, each voting system component found to contain
31 the unauthorized hardware, software, or firmware shall be
32 considered a separate violation. A penalty imposed pursuant to
33 this subdivision shall be apportioned 50 percent to the county in
34 which the violation occurred, if applicable, and 50 percent to the
35 Office of the Secretary of State for purposes of bolstering voting
36 systems security efforts.

37 (2) Immediate commencement of proceedings to withdraw
38 approval for the voting system in question.

1 (3) Prohibiting the manufacturer or vendor of a voting system
2 from doing elections-related business in the state for one, two, or
3 three years.

4 (4) Refund of all moneys paid by a local agency for a voting
5 system or a part of a voting system that is compromised by an
6 unauthorized change or modification, whether or not the voting
7 system has been used in an election.

8 (5) Any other remedial actions authorized by law to prevent
9 unjust enrichment of the offending party.

10 (b) (1) The Secretary of State may seek all of the following
11 relief for a known but undisclosed defect, fault, or failure in a
12 voting system or part of a voting system approved or conditionally
13 approved in California:

14 (A) Refund of all moneys paid by a local agency for a voting
15 system or part of a voting system that is defective due to a known
16 but undisclosed defect, fault, or failure, whether or not the voting
17 system has been used in an election.

18 (B) A civil penalty from the offending party or parties, not to
19 exceed fifty thousand dollars (\$50,000) per violation. For purposes
20 of this subdivision, each defect, fault, or failure shall be considered
21 a separate violation. A defect, fault, or failure constitutes a single
22 violation regardless of the number of voting system units in which
23 the defect, fault, or failure is found.

24 (C) In addition to any other penalties or remedies established
25 by this section, the offending party or parties shall be liable in the
26 amount of one thousand dollars (\$1,000) per day after the
27 applicable deadline established in Section 19212.5 until the
28 required disclosure is filed with the Secretary of State.

29 (2) A penalty imposed pursuant to subparagraph (B) or (C) of
30 paragraph (1) shall be deposited in the General Fund.

31 (c) Prior to seeking any measure of relief under this section, the
32 Secretary of State shall hold a public hearing. The Secretary of
33 State shall give notice of the hearing in the manner prescribed by
34 Section 6064 of the Government Code in a newspaper of general
35 circulation published in Sacramento County. The Secretary of
36 State also shall transmit written notice of the hearing, at least 30
37 days prior to the hearing, to each county elections official, the
38 offending party or parties, a person that the Secretary of State
39 believes will be interested in the hearing, and a person who
40 requests, in writing, notice of the hearing.

- 1 (d) The decision of the Secretary of State, to seek relief under
- 2 this section, shall be in writing and state his or her findings. The
- 3 decision shall be open to public inspection.